IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 633 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE SHARAD D.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Appellant(s)
Versus
BABUBHAI BALCHANDDAS PATEL & 8 - Opponent(s)

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Appearance :

Mrs.Falguni Patel, APP for Appellant(s) : 1,
NOTICE SERVED for Opponent(s) : 1 - 2,4 - 9.
MR PRAKASH K JANI for Opponent(s) : 1 - 2,4 - 6.
UNSERVED-EXPIRED (N) for Opponent(s) : 3,
MR DK MODI for Opponent(s) : 7,
MR MD MODI for Opponent(s) : 7,
MR KR RAVAL for Opponent(s) : 8 - 9.

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CORAM : HONOURABLE MR.JUSTICE SHARAD D.DAVE

Date : 11/01/2007

ORAL JUDGMENT

1. This is an appeal filed by the appellant State under Section 378 of the Code of Criminal Procedure, 1973 challenging the judgment and order dated 31.12.94 passed by the learned Chief Judicial Magistrate, Mehasana in Criminal Case No.245 of 1987, whereby the Chief Judicial Magistrate, Mehsana had acquitted the accused from the offence punishable under Section 7(1) read with Section 16(1)(A) of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as `the Act') under Section 248(1) of Criminal Procedure Code.

2. The short facts giving rise to this appeal are such that :

The present complainant Shri I.M.Raval was serving as Food Inspector and was authorized to take sample for the purpose of analysis under Prevention of Food Adulteration Act, 1954. Former Food Inspector Shri P.M.Patel visited the shop of accused no.1 on 23.5.86 at about 1.00 p.m., which was in the name of M/s Mahagayatri Trading Company situated at Mal Godown, Mehsana where accused nos.1 and 2 were present at the relevant time. The Food Inspector, after giving his identification, collected sample from the ground nut oil from packed tin of Mayur Brand which was manufactured by respondent nos.7,8 and 9 sent the sample for analysis and after receiving the report of public analyst, it was found that the groundnut oil was adulterated and was not

found as per the standard laid down under the Act. Therefore, necessary consent to prosecute the accused was obtained and complaint was filed against the accused.

3. After receiving the complaint, summons were issued to the accused and after proceeding with the case in accordance with law, delivered the judgment on 29.2.1992, against which the accused filed appeal before the Sessions Court. The Sessions Court remanded the matter to the learned Chief Judicial Magistrate, Mahesana and the trial was conducted denovo as per the provision of Section 326(3) of Criminal Procedure Code.

4. Thereafter, the charge was framed against all the accused and as all the accused pleaded not guilty and claimed to be tried, after recording the evidence and hearing the learned counsel for both the sides, acquitted the accused from the offence punishable under under Section 7(1) read with Section 16(1)(A) of the Act under Section 248(1) of Criminal Procedure Code against which the present appeal is filed.

5. Heard Ms.Falguni Patel, learned APP for the appellant – State and Mr.Y.M.Thakore for Mr.P.K.Jani for respondent nos.1,2,4,5 and 6, Mr.D.K.Modi for respondent no.7, Mr.K.R.Raval for respondent nos.8 and 9. As accused no.3 expired, he was unserved.

6. The judgment is challenged on various grounds mentioned in para 5 of the memo of appeal. Ms.Falguni Patel, learned APP has taken me through the relevant part of the judgment and oral as well as documentary evidence led during the course of trial.

6. Mr.D.K.Modi for respondent no.7 submitted that the alleged sample was collected from the packed seal tin bearing label of Mayur Industries as well as the label of original accused no.8 and that it is the settled position that when the sample is collected from packed tin, it is the responsibility of the manufacturer and not the vendor. It is further submitted that the panch witness in whose presence the groundnut oil was collected with pali taken out from castor oil has deposed the same and he has not been declared hostile and, therefore, as per the settled position, the evidence of non-declared hostile witness should be believed. In support of his submission, learned advocate relied on the decision in Criminal Appeal No.485 of 1987 dated 21.8.1997, wherein this Court (Coram : J.M.Panchal,J) has observed in para 6 that “It is relevant to note that though this witness has not supported the prosecution, he is not declared hostile. It means that the prosecution wants the Court to believe evidence of this witness. If evidence of this witness is accepted to be true and correct, it becomes evident that it directly contradicts evidence of the Food Inspector.”

7. He further submitted that sanction under Section 20 is a condition precedent for institution of prosecution under the Act. He submitted that sanction in this case is granted by Mr.G.S.Soni, whereas no notification empowering him to grant such sanction is produced. In the xerox copy of notification dated 16.10.80, it is mentioned that the Assistant Director, Drugs Control Administrator, Mahesana is empowered to function as sanctioning authority. It is submitted that the prosecution has prove that Mr.G.S.Soni was holding the post of Assistant Director, Drugs Control, Mahesana Circle and therefore he was entitled to grant the sanction. Further, he submitted that Rule 14 of the Act is mandatory before taking the samples that the vessel should be cleaned before taking the sample, which has not been done in this case. In support of his submission, he relied on the decision in Criminal Appeal No.404 of 1996 dated 12.6.2006, wherein this Hon'ble Court (Coram : S.R.Brahmbhatt,J) has observed in para 6 that “This appeal deserves to be disposed of only on the ground that the prosecution has failed in establishing beyond doubt the absolute compliance of provisions of Rule 14 of the Rules. The deposition of the complainant itself is sufficient to go to show that the complainant was not sure of the status of the bottles, wherein, the sample was collected. In the deposition, he has admitted that he has no knowledge whether the bottle contained any `insect' and in the report of Public Analyst, it's not disclosed as to any `insect damage', whereas, in the

report of the Central Food Laboratory, it is indicated that the sample was `insect damaged.” The deposition of the complainant further discloses that the bottles were not cleaned in his presence nor in the presence of vendor and panch and he had no knowledge as to who had cleaned the bottles. Mere statement that clean bottles were used would not be sufficient to show that bottles were cleaned.”

8. He also submitted that Rule 13(2) of the Act is mandatory which states that intimation along with the copy of the public analyst report is to be given to the accused by the Local Health Authority. Here in this case, the Local Health Authority has made a yadi but mere dispatch is not sufficient but the receipt by the vendor is also to be proved. In support of his submission, he relied on the decision reported in 2002 FAJ 490, wherein the Hon'ble Supreme Court has observed in para 4 that “It is argued on behalf of the accused that mere despatch of the report is not enough and that the prosecution is further obliged to prove that the letter so despatched had reached the addressee, i.e., the accused. We agree with this submission, as we believe that forwarding a copy of the report is not only a ritual, but a statutory requirement to be mandatorily observed in all the cases Despatch of such a report it is intended to inform the accused of his valuable right to get the other sample analysed from the central food laboratory.”

Further, he also relied on the decision in Criminal Appeal No.1088 of 1985 dated 4.4.1994, wherein this Hon'ble Court (Coram : S.D.Dave,J) has observed on page 3 that “As rightly submitted by the learned counsel for respondents accused, the complainant Food Inspector was required to say in his evidence that the bottles were cleaned or washed either by himself or in his presence and when he has not said so, no reliance could be placed upon the analysis report. The Court below has accepted this contention on the basis of the pronouncement of this Court in M.B.Risaldar V.Radheshyam Ramdhar Agarwal & Anr. 21(2) G.L.R. pg.136. This decision makes it abundantly clear that when this is not done the rule requirement would get frustrated and that reliance could not have been placed upon the analysis report which would show that the food article was adulterated. On the analysis of the factual and legal position it appears that no exception can be taken with the orders of acquittal pronounced by the Court below and the appeal would fail. Accordingly, the present appeal is dismissed and orders of acquittal under challenge are upheld and confirmed.”

He also relied on the decision reported in 2005(1)FAC 87, wherein this Hon'ble Court (Coram : A.K.Trivedi,J) has observed in paras 4 to 6 that :
“4. On having careful scrutiny of the impugned judgment and order, statutory provisions contained in Rule 14 of the Rules and the evidence of the

complainant at Exhibit 59, it is seen that the complainant himself has admitted that he has not cleaned and dried the bottle before taking sample and putting the same in the bottle. Therefore, according to me, since the complainant has not complied with the statutory provisions of Rule 14 of the Rules, there is clear violation of the Rule which is mandatory in nature. In aforesaid view of the matter, I am of the opinion that the learned Magistrate has not committed any error or illegality in acquitting both the respondents/accused of the offence with which they were charged."

5. It may be noted that this is an acquittal appeal in which Court would be slow to interfere with the order of acquittal. Infirmities in the prosecution case go to the root of the matter and strike a vital blow on the prosecution case. In such a case, it would not be safe to set aside the order of acquittal, more particularly, when the evidence has not inspired confidence of the learned Magistrate. As this Court is in general agreement with the view expressed by the learned Magistrate, it is not necessary for this Court either to reiterate the evidence of the prosecution witnesses or to restate reasons given by the learned Magistrate for acquittal and in our view, expression of general agreement with the view taken by the learned Magistrate would be sufficient in the facts of the present case for not interfering with the judgement of the learned Magistrate and this is so, in view of the decisions rendered by the Hon'ble Supreme Court in the case of

Girja Nandini Devi and others Vs. Bijendra Narain Chaudhary, AIR 1967 SC 1124 and State of Karnataka Vs.Hema Reddy and another, AIR 1981 SC 1417.

6. On overall appreciation of evidence, this Court is satisfied that there is no infirmity in the reasons assigned by the learned Magistrate for acquitting both the respondents/accused. Suffice it to say that the learned Magistrate has given cogent and convincing reasons for acquitting both the respondents/accused and the learned A.P.P., has failed to dislodge the reasons given by the learned Magistrate and convince this Court to take a view contrary to the one taken by the learned Magistrate. Therefore, there is no merit in the acquittal appeal, and the appeal deserves to be dismissed at its inception."

9. Mr.Raval, learned advocate for opponent nos.8 and 9 and Mr.Thakore, learned advocate for opponent nos.1,2,4,5 and 6 adopted the arguments of Mr.Modi.

10. Learned advocate Mr.Modi for respondent no.7 has cited various decisions in support of their submissions.

11. Learned trial Judge has discussed all the points mentioned hereinabove on behalf of the accused and the authorities cited on behalf of the accused and came to the conclusion to acquit all the accused. More particularly, the learned trial Judge,

discussing on the point of sanction came to the conclusion that on 14.11.86 the Assistant Commissioner, Food and Drugs Control Administration, Mahesana was not a competent authority to accord the sanction and, therefore, the prosecution is bad in law on this ground as well as other grounds and, therefore, acquitted the accused.

12. In view of the above, I do not find any perversity or illegality in the findings. It is now settled that when the appellate forum is in agreement with the reasons assigned by the lower court, then it is not necessary to rewrite those reasons. There is no scope of reappreciation of the evidence unless the Appellate Court finds perversity in the finding as well as gross error in appreciation of the evidence. I am of the opinion that this cannot be said to be rare case where the acquittal is required to be converted into that of conviction.

13. In view of the foregoing discussion, the following order is passed.

14. The appeal of the State is dismissed. The bail bond, if any, shall stand discharged.

(Sharad D.Dave,J)

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